



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 6213-99
28 July 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps filed an application with this Board requesting, in effect, a change in his reenlistment code.

2. The Board, consisting of Mr. Kastner, Mr. Brezna and Ms. Madison, reviewed Petitioner's allegations of error and injustice on 11 July 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner's application was filed in a timely manner.

c. Petitioner received an adverse fitness report for the period 9 February to 5 July 1995. The comments stated, in part, as follows:

... His leadership skills are limited, and (he) lacks the confidence to inspire others to obey his orders.
... although this Marine is approaching service limits, he still needs more time as a sergeant.

It appears that Petitioner was selected for promotion by a selection board that was in session when the report was written. He was promoted to SSGT (E-6) on 4 January 1996.

d. Petitioner reenlisted in the Marine Corps for two years on 5 March 1996. The fitness report for the period 16 October

1997 to 31 December 1997 contains good comments concerning his performance of duty but is adverse because of the comments concerning his PRT failures. The comments state, in part, as follows:

... Gives his best effort. Works well with his peers to accomplish unit goals. Maintained professional attitude in spite of experiencing difficulties maintaining minimal physical fitness standards. Failed PFT on four occasions. Continues to seek improvement
...

In his statement accompanying the report, Petitioner contended that he could not pass the PFT because of trouble doing pullups due to shoulder pain and that he has been diagnosed with rotator cuff tendinitis. Petitioner and a command representative spoke to the battalion doctor, who stated that rotator cuff tendinitis should not stop anyone from doing pullups. Although there may be severe pain, nothing medically could be done to help correct this condition. The reviewing officer stated that "although he has had some medical reasons for failing the PFT, I do not feel that he is putting forth his best effort in maintaining a high degree of physical fitness. ... if he can show that he can pass the PFT .. I believe that he has the potential to complete a career. ..."

e. Petitioner extended his enlistment for one month on 5 March 1998 and for six months on 5 April 1998. The six month extension was for the purpose of facilitating his assignment to weight control. The fitness report for the period 1 January 1998 to 12 June 1998 states that his performance of duty was good but that he was not recommended for promotion because he did not meet the height and weight standards.

f. On 1 and 2 September 1998, a senior noncommissioned officer (SNCO) and his section OIC recommended Petitioner for reenlistment with confidence. The SNCO noted that he had reduced his body fat to 17%. On 9 and 16 September 1998, the company 1stSGT and the company command recommended for reenlistment with confidence. The 1stSGT stated "I am recommending (him) for reenlistment at this time because he is within standards and desires to stay a Marine."

g. The record shows that on 9 September 1998 Petitioner requested reenlistment for 48 months. On 24 September 1998, the Battalion Sergeant Major stated, as follows:

... at this time is not recommended for reenlistment due to his minimum performance and (his) past 6 months progress on weight control and physical fitness. (He) passed a PFT with a 131 on 980922. The passing score

for 34 years old is a 110. He has been on Battalion Remedial PT since 11 June 98 and has just recently reduced his weight and body fat to conform to Marine Corps standards. (He) struggles to maintain his weight and physical fitness and barely meets the minimum standards. Since Marine is at this time within standards, I am recommending non-reenlistment with full separation (pay).

Subsequently, the battalion commander recommended that Petitioner not be reenlisted.

h. Petitioner subsequently signed two one month extensions while his reenlistment request was pending. On 18 November 1998 Headquarters Marine Corps denied his request for reenlistment stating, in part, as follows:

... Our decision was based on his commanding officer's nonrecommendation, his overall performance, and his failure to maintain Marine Corps performance standards. Specifically, he did not demonstrate the high standards of personal or professional conduct expected of a staff noncommissioned officer of his grade and years of service.

... (He) was properly assigned a reenlistment code of RE-4, which indicates not recommended for reenlistment. This reenlistment code is warranted on the basis of his not being recommended by his commanding officer. Additionally, (he) was authorized one-half involuntary separation pay. A Marine must be fully qualified for reenlistment in order to receive full separation pay.

i. Petitioner was allowed another two month extension for transition purposes. He was honorably discharged on 4 February 1999 and was assigned an RE-4 reenlistment code. The DD 214 shows that he had completed 16 years, 8 months and 7 days of active service. At that time, he was paid one half separation pay in the amount of \$22,365.09.

j. Department of Defense Instruction 1332.29 sets forth the requirements for eligibility for separation pay. The instruction, as it applies to Petitioner's case, states that full separation pay is warranted if the servicemember receives an honorable discharge and is fully qualified for retention but is denied reenlistment or continuation by the service concerned. Additionally, it states as follows:

.... In extraordinary instances, Secretaries of the Military Departments concerned may award full

separation pay to members otherwise eligible for half separation pay when the specific reasons for separation and the overall quality of the member's service have been such that denial of such pay would be clearly unjust. ...

k. The Marine Corps Enlisted Career Planning and Retention Manual (MCO P1040.31) sets forth the requirements for the payment of full separation pay. Specifically, an individual must neither have been placed on a formal weight control program more than twice, nor failed the PFT more than twice without a valid medical excuse during the enlistment.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board was aware of the DOD instruction concerning separation pay and the Marine Corps regulations for such pay. There is no evidence in Petitioner's fitness report that he was placed on a weight control program more than once. Concerning the PFT failures, there is no evidence that he was medically excused from the PFT, but it is clear that he had shoulder problems which could have impacted on his ability to pass the PFT. The Board also notes that Petitioner, at the time his reenlistment request was denied, met the body fat and physical fitness standards and was otherwise qualified for reenlistment. Additionally, the Board notes the recommendations for full separation pay made as part of the review of his reenlistment request. Therefore, the record shows that Petitioner met the PRT and weight control standards, but was denied reenlistment, in large part, based on the supposition that he would not meet the standards in the future. Given the circumstances of this unique case, the Board concludes that the payment of full separation pay is warranted.

It is within the authority of Headquarters Marine Corps to deny reenlistment for any good reason and direct the assignment of an RE-4 reenlistment code. Based on the facts of this case the Board concludes that there has been no abuse of discretion and a change in the reenlistment code is not warranted.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that at the time of his discharge on 4 February 1999 he was paid full separation pay vice the one half separation pay now of record.
- b. That Petitioner's request for a change in the reenlistment code be denied.

c. That this Report of Proceedings be filed in Petitioner's naval record.

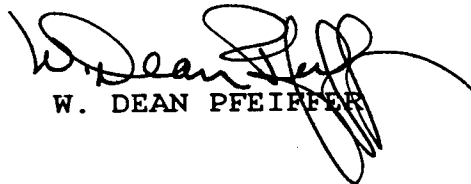
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



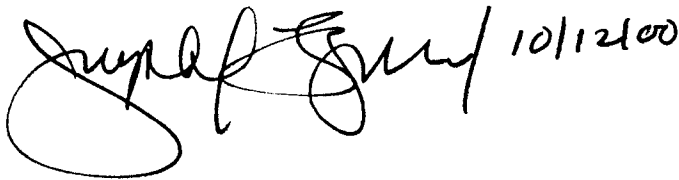
ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER

Reviewed and approved:



10/12/00

Joseph G. Lynch
Assistant General Counsel
(Manpower & Reserve Affairs)